

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. BFA-24846-043
PERMIT NO. 898-5555
NONCOMPLIANCE NO. 41-1513
FAILURE TO ABATE CESSATION ORDER NO. 04-1084**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

VS.

FINAL ORDER

JAMES H. TAYLOR d/b/a JAMES H. TAYLOR
MINING COMPANY and FIRST COMMONWEALTH
BANK OF PRESTONSBURG,

DEFENDANTS.

* * * * *

THIS MATTER is before the Secretary on the Report and Recommendation of the Hearing Officer. Having considered the Hearing Officer's Report and Recommendation and any exceptions and responses thereto, and being otherwise sufficiently advised, it is hereby ORDERED AND ADJUDGED as follows:

1. The Hearing Officer's Report and Recommendation filed on __[11/14/00]_____, is hereby incorporated by reference as if fully stated herein.

The recommended Findings of Facts and Conclusions of Law set out in the Hearing Officer's Report are ADOPTED by reference as the Findings of Fact and Conclusions of Law for this Final Order.

2. Defendants James H. Taylor d/b/a James H. Taylor Mining Company, ("Taylor") and First Commonwealth Bank of Prestonsburg ("Bank") have WAIVED their right to an administrative hearing concerning this matter.

3. As evidenced by the final order of the Secretary entered on May 9, 2000 in PAC-

24846-IV, Taylor violated Kentucky's surface mining laws as cited in Notice of Noncompliance 41-1513 and Cessation Order 04-1084 and has not abated those violations on Permit 898-5555.

4. The following performance bonds, having a total remaining encumbered balance of \$27,400, are FORFEITED.

- (a) Letter of Credit 00502 for \$9,730 issued by the Bank;
- (b) Letter of Credit 00503 for \$15,600 issued by the Bank;
- (c) Certificate of Deposit 39480 for \$2,000 issued by Pikeville National Bank and Trust Company; and
- (d) Cash bond PIV46203 for \$70.

5. Taylor is INELIGIBLE to receive another coal mining permit or begin future mining operations in Kentucky until he has complied with the requirements of Kentucky's surface mining laws and KRS 350.130.

6. Taylor SHALL ABATE the violations cited in the Notice of Noncompliance and Cessation Order listed above, reclaim the permit to permanent program standards, and achieve the post mining land use as approved in the permit.

7. This is a FINAL and APPEALABLE Order.

APPEAL RIGHTS

In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a Petition for Review. Such petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet.

ENTERED this the _____ day of _____, 20__.

//S// 5/18/00
JAMES E. BICKFORD, SECRETARY
NATURAL RESOURCES AND

ENVIRONMENTAL PROTECTION CABINET

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing FINAL ORDER was, on this _____ day of _____, 2000, mailed by first-class mail, postage prepaid to:

JAMES H TAYLOR d/b/a
JAMES H TAYLOR MINING COMPANY
PO BOX 105
PAINTSVILLE KY 41240

FIRST COMMONWEALTH BANK
OF PRESTONSBURG
BURL WELLS SPURLOCK AGENT
311 N ARNOLD AVENUE
PRESTONSBURG KY 41653

and hand-delivered to:

HON. JOHNNA M. CHAFFIN
Office of Legal Services
Natural Resources and Environmental
Protection Cabinet
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COORDINATOR

Distribution:

DIVISION OF FIELD SERVICES/BFA
PRESTONSBURG REGIONAL OFFICE
LTS
HEARING OFFICER, VM
ORDER FILE

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. BFA-24846-043
PERMIT NO. 898-5555
NONCOMPLIANCE NO. 41-1513
FAILURE TO ABATE CESSATION ORDER NO. 04-1084**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

VS. **HEARING OFFICER'S REPORT AND RECOMMENDATION**

JAMES H. TAYLOR d/b/a JAMES H. TAYLOR
MINING COMPANY and FIRST COMMONWEALTH
BANK OF PRESTONSBURG,

DEFENDANTS.

* * * * *

I. SUMMARY OF PROCEEDINGS

Nature of Case: Coal mining enforcement action for bond forfeiture.

Hearing Date: Submitted on Motion for Default October 17, 2000.

Appearances: Hon. Johnna Chaffin for Cabinet;
 James H. Taylor d/b/a James H. Taylor Mining Company ("Taylor") did
 not appear;
 First Commonwealth Bank of Prestonsburg ("Bank") did not appear.

Submittal Date: October 17, 2000.

Hearing Officer: Hon. Vanessa Mullins.

Issues Summary: Whether Defendant should be held in default for failure to appear.

Recommendations: Defendant should be found in default and the Cabinet be granted the relief
 it requested. The Secretary should find Taylor failed to abate the
 previously affirmed violations, determine Taylor ineligible to receive
 another permit or begin another operation until the requirements of KRS
 350.130 are met, forfeit the performance bonds and order Taylor to abate
 the violations and achieve the post mining land use.

* * * * *

II. FINDINGS OF FACT / PROCEDURAL HISTORY/ CONCLUSIONS OF LAW

Based upon the record of this matter, the Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law.

1. On July 21, 2000, the Natural Resources and Environmental Protection Cabinet filed an Administrative Complaint against Taylor and the Bank concerning violations on Permit No. 898-5555. The Cabinet's Administrative Complaint concerned violations previously addressed in a Secretary's Final Order entered on May 9, 2000, affirming the violations cited in Notice of Non-Compliance 41-1513 and Cessation Order 04-1084, in file number PAC-24846-IV. The Administrative Complaint alleged that the violations had not been abated.

2. The Complaint also alleged that Taylor as principal posted the following performance bonds having a total remaining encumbered balance of \$27,400:

- (a) Letter of Credit 00502 for \$9,730 issued by the Bank as surety;
- (b) Letter of Credit 00503 for \$15,600 issued by the Bank as surety;
- (c) Certificate of Deposit 39480 for \$2,000 issued by Pikeville National Bank and Trust Company; and
- (d) Cash bond PIV46203 for \$70.

3. As evidenced by the return receipt cards (green cards), the Administrative Complaint, Summons and Order setting prehearing conference for September 12, 2000 at 2:00 p.m. Eastern Time were sent to Taylor by certified mail, postage prepaid and return receipt requested on July 24, 2000, to Taylor's permit address. Taylor accepted service of the documents on July 25, 2000, as indicated on the return receipt card. The Bank accepted service of the documents on July 25, 2000, as indicated on the return receipt card.

4. Based on the foregoing, I conclude that the Administrative Complaint, Summons and Order were properly served on Defendants in accordance with 405 KAR 7:091, Section 5(1)(c).

5. The Defendants failed to file an Answer or responsive pleading as required by 405 KAR 7:092, Section 5(3)(b).

6. A Prehearing Conference was held September 12, 2000. The Cabinet was represented at the hearing. The Defendants failed to appear. Since the Defendants did not appear, the Cabinet requested that the Hearing Officer enter an Order for Defendants to appear and show cause as to why they should not be held in default.

7. On September 15, 2000, a Show Cause Order was entered and served ordering the Defendants to appear on October 18, 2000, at 10:00 a.m. Eastern Time and show cause why they should not be deemed to have waived their rights to an administrative hearing. The Order Directing Defendants to Appear and Show Cause was properly served on the Defendants in conformity with the Cabinet's regulation governing service of documents or other pleadings. 400 KAR 1:030, Section 2.

8. On October 18, 2000, at 10:00 a.m. a Show Cause Hearing was held. The Cabinet was represented by the Hon. Johnna Chaffin. No appearance was made on behalf of the Defendants to show cause why they should not be deemed to have waived their right to a hearing under 405 KAR 7:092, Section 5(5).

9. Pursuant to 405 KAR 7:092, Section 5, if an order to show cause is not satisfied as required, the Hearing Officer shall recommend to the Secretary the entry of a final order in conformity with the relief requested by the Cabinet in its Administrative Complaint.

10. Under the provisions of 405 KAR 7:092, Section 5(5), the Defendants have admitted the allegations made by the Cabinet in its Administrative Complaint and failed to demonstrate why a Secretary's Order adverse to their interests should not be entered in accordance with the provisions of 405 KAR 7:092 granting the Cabinet the relief it requested in its Administrative Complaint.

III. RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearing Officer recommends that the Secretary enter the recommended Order, attached and incorporated herein, granting the Cabinet the relief requested in its Administrative Complaint. The Secretary should determine that the violations have not been abated, forfeit the bond, determine Taylor ineligible to receive another permit or begin another operation until the requirements of KRS 350.130 are met, and order Taylor to abate the violations and achieve the post mining land use.

IV. EXCEPTIONS AND RESPONSE RIGHTS

Pursuant to KRS 350.0301 any party may file exceptions to this Report and Recommendation within fourteen (14) days of service of this Report. A party may file a Response to any Exceptions within (21) days of service of this Report. The Secretary will consider this report, exceptions, response and recommended order and decide the case.

SO RECOMMENDED this ____ day of _____, 2000.

____//S// 11/14/00_____
VANESSA MULLINS
ENVIRONMENTAL ADMIN. HEARING OFFICER
OFFICE OF ADMINISTRATIVE HEARINGS
35-36 FOUNTAIN PLACE
FRANKFORT, KENTUCKY 40601
(502) 564-7312

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing HEARING OFFICER'S REPORT AND RECOMMENDATION AND FINAL ORDER was, on this _____ day of _____, 2000, mailed by first-class mail, postage prepaid to:

JAMES H TAYLOR d/b/a
JAMES H TAYLOR MINING COMPANY
PO BOX 105
PAINTSVILLE KY 41240

FIRST COMMONWEALTH BANK
OF PRESTONSBURG
BURL WELLS SPURLOCK AGENT
311 N ARNOLD AVENUE
PRESTONSBURG KY 41653

and hand-delivered to:

HON. JOHNNNA M. CHAFFIN
Office of Legal Services
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Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

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